



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** The Taylor Group, Incorporated

**File:** B-235205

**Date:** August 11, 1989

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### DIGEST

Agency decision to withdraw small business set-aside is unreasonable where not based upon a diligent effort to discover small business interest since responses to Commerce Business Daily notice and attendance at preproposal site visit indicated potentially extensive small business interest which agency failed to identify by its limited inquiry.

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### DECISION

The Taylor Group, Incorporated protests the decision by the Department of the Navy to withdraw the total small business set-aside in request for proposals (RFP) No. N62467-89-R-0256, for public works shops support services at the Naval Air Station, Jacksonville, Florida.<sup>1/</sup> Taylor contends that the contracting officer had sufficient expectation of small business interest to maintain the RFP as a set-aside.

We sustain the protest.

The requirement was synopsisized in the Commerce Business Daily (CBD) on January 19, 1989. The CBD synopsis stated that the proposed procurement was a total small business set-aside limited to small business concerns whose average annual receipts did not exceed \$13.5 million. In response to the CBD notice, the Navy received approximately 88 letters requesting solicitation packages, at least 43 of which specifically identified the requesting firms as small businesses. The RFP was issued on March 2, as a 100 percent small business set-aside for a base term and 4 option

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<sup>1/</sup> The required shops support services include operation, maintenance and minor construction at various facilities at the installation, involving, among other things, industrial utilities, aircraft support, and computer operations.

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years.<sup>2/</sup> The solicitation provided for a preproposal site visit on March 30, and provided for the submission of initial offers by April 21.

At the preproposal site visit some 11 firms, including the protester, from seven different states were in attendance. Meanwhile, the agency states that during this time "concerns were expressed to [the contracting officer] regarding the probability of receiving" two offers from small business concerns. Accordingly, the contract specialist was instructed to contact the activity's small and disadvantaged business utilization specialist (SADBUS) and the regional Small Business Administration (SBA) representative. The contract specialist was provided a list of prospective offerors located in the region and contacted five firms whose names appeared on both the SBA list and the agency's original "bidders list."<sup>3/</sup> The contract specialist states that of those five firms, one responded that it intended to submit an offer on the subject RFP, one was noncommittal with respect to whether it would submit an offer, and three indicated that they did not intend to submit offers.

Based upon this informal inquiry, the contracting officer concluded that there was no reasonable expectation that at least two responsible small business firms would compete for the award. On April 7, the contracting officer executed a written determination to withdraw the set-aside because of the "technical complexities" of the procurement and because of the bonding requirements of the solicitation (which the contracting officer determined small business concerns would have difficulty in meeting). The contracting officer also

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<sup>2/</sup> The Navy estimated the cost of the proposed contract at approximately \$10 million annually. The preceding solicitation for these same services had been issued pursuant to Office of Management and Budget Circular A-76 as a 100 percent small business set-aside. Award under that solicitation was made to the current incumbent, a small business, which has filed for reorganization under the bankruptcy statutes after experiencing difficulty in performing the contract.

<sup>3/</sup> The contract specialist did not make a written record of the firms called or their responses. She is able to remember the names of only two small business firms contacted. (These two firms were among the 11 firms that attended the preproposal site visit.) At least six and possibly nine firms that attended the site visit were not contacted by the contract specialist to determine small business interest in submitting offers.

reports that he discounted the importance of the presence of 11 firms at the preproposal site visit since under the previous procurement 14 firms attended the site visit and only 2 bids were received. After obtaining the concurrence of the SADBUS and SBA representative on the matter, the contracting officer, on April 12, issued an amendment which provided that competition on the RFP would be on an unrestricted basis. This protest, filed before the next closing date, followed.

The protester argues that the Navy lacked a reasonable basis to withdraw the set-aside. Taylor argues that the CBD notice produced a response from a large number of firms and notes that the preproposal site visit was attended by 11 firms. According to the protester, the agency's effort to contact prospective offerors was limited because the SBA's list contained only local firms. In addition, the protester argues that the agency should have at least contacted all firms which had attended the preproposal site visit. In this regard, the protester points out that it was never contacted by the contract specialist and has shown that at least five other firms present at the site visit were also not contacted.

The agency responds that it reasonably concluded that it would not receive at least two offers from responsible small businesses. In support of its position, the agency points to the dollar value and complexity of the contract and to the fact that the current incumbent small business is having financial difficulties in connection with its current performance. In addition, the Navy argues that it "had no independent knowledge that any of the firms which attended the site visit were in fact small businesses [and that there] is no duty on the agency to actually contact any particular businesses to determine if they . . . will be submitting a proposal." The Navy also notes that the SADBUS and the regional SBA representative concurred in the agency's decision.

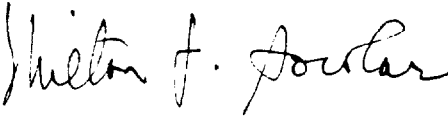
As a general rule, a procurement must be set aside for small businesses where the contracting officer determines that there is a reasonable expectation of receiving offers from at least two responsible small business concerns and that award will be made at a reasonable price. Federal Acquisition Regulation (FAR) § 19.502-2 (FAC 84-40). The FAR also requires the continued set-aside of a particular acquisition where it has previously been the subject of a successful set-aside, where, as here, agency regulations so require and where the conditions for a set-aside continue to exist (e.g., an expectation of a least two responsible offerors who will make offers which are at fair market price).

FAR § 19.501(g); Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 219.501(g) (1988 ed.). We also think that a contracting officer must undertake reasonable efforts to ascertain whether it is likely that the agency will receive offers from at least two small businesses with the capability to perform the work. See SEAVAC International, Inc., B-231016, B-231457, Aug. 11, 1988, 88-2 CPD ¶ 134. In this regard, we have found unreasonable the determination to issue a solicitation on an unrestricted basis where that determination is based upon outdated or incomplete information. See FKW Inc. Sys., B-235228, July 11, 1989, 89-2 CPD ¶ \_\_\_\_.

Here, we think that the agency improperly withdrew the small business set-aside. First, despite the agency's concern about the size and complexity of the procurement, the anticipated dollar value of \$10 million annually falls below the small business concern size standard that the agency itself advertised in the CBD. Further, there is no evidence in the record that this operation and maintenance contract is beyond the capability of small business firms. Second, we think the agency failed to make reasonable efforts to ascertain small business interest prior to withdrawing the small business set-aside. Although 88 firms responded to the synopsis and 11 firms attended the preproposal site visit, the agency only contacted a small sample of five firms to determine whether sufficient small business interest existed. We think this sample was wholly inadequate. Concerning the agency's argument that it did not know whether firms attending the preproposal site visit were small businesses, we merely note that the solicitation at the time of the site visit was restricted to small business firms exclusively. Further, at least four of these firms had previously written letters to the agency identifying themselves as small businesses. Yet, even these four firms were apparently never contacted. Third, we also do not find persuasive the fact that the SADBUS and the regional SBA representative concurred in the contracting officer's determination to remove the set-aside in this case. In our opinion, the judgment of the SADBUS and regional SBA representative was based upon the Navy's representations regarding the potential for receiving adequate competition and, as noted above, those representations were not based upon sufficient efforts on the part of the Navy.

The protest is sustained. By separate letter of today to the Secretary of the Navy, we are recommending that the contracting officer adequately investigate the potential small business interest in this procurement, and, if two responsible small business concerns show sufficient interest (and if award can be made at a reasonable price), the RFP

should be amended to again set aside this procurement for small business concerns. We also find that Taylor is entitled to be reimbursed its protest costs. 4 C.F.R. § 21.6(d)(1) (1988).

*for*   
Comptroller General  
of the United States